the plates were rolled into cylindrical form. The applicant's hand was caught in the rolling machine and jammed between the rollers resulting in the loss of the first phalanx of the thumb and injuries to two fingers. The applicant contended that he was at the rolling machine for the purpose of adjusting it and that the machine was moving under power at the time of the accident. It appeared that the applicant was wearing gloves and that there was a rule in the factory prohibiting the wearing of gloves by any workmen working at the rolling machine. Liability was disputed on the ground that the applicant was not employed at the rolling machine and that, therefore, the accident did not arise out of his employment and even if it had it was directly attributable to the wilful disobedience by the workman of an express order.

Spencer Wilkinson for the Respondents.

Either the applicant was wearing gloves while on the rolling machine which was prohibited or he was wearing gloves for spotting and he ought not to have gone near the rolling machine with gloves on. From the slight injuries sustained by him it may be inferred that the machine was not working under power. As to "serious and wilful misconduct" see *Willis on Workmen's Compensation*, p. 4. The Ordinance has taken the result of the cases prescribing three types of serious and wilful conduct, Section 3 (2) (b), (i). (ii) & (iii). As to section 3 (2) (b) (ii) cf. *Willis*, p. 109 last paragraph. The clause ought to be read as disjunctive. The onus is on the applicant to shew that the accident arose "in the course of the employment" (*Willis*, p. 82). As to prohibited acts taking a workman outside the sphere of his employment see *Moore* v. *Donnelly*, (1921) 1 A.C. 329. The Ordinance has omitted section 1(2) of the English Act passed as a result of this case. A workman is not entitled to compensation for injuries suffered while doing something outside the scope of his duties. He referred to *Reed* v. *Gt. Western Rail Co.*, (1909) A.C. 31; *Lancashire & Yorkshire Rail Co.*, v. *Highley*, (1917) A.C. 352; *Hopley* v. *Pool & ors.*, 8 B.W.C.C. 512; *Fairhurst* v. *Hollingwood & Screw & Rivet Co.*, (1923) 129 L.T. 683; 16 B.W.C.C. 168 A.C., and *Thames* v. *Ocean Coal Co.*, (1933) A.C. 100.

Bannerjea for the Applicant in reply.

The applicant assisted at the rolling machine. There were no express orders against mutual assistance amongst workmen.

The Commissioner gave oral judgment dismissing the claim.

N. A. WORLEY, COMMISSIONER—I accept the version of this accident given by the witnesses called for the respondents, as it seems to me more in accordance with the facts. I am disposed to agree that if the machine had been working under power at the time of the accident as the applicant alleged, his injuries would have been far more serious. I also accept the evidence of the witness Hogan that he had expressly warned the applicant against the danger of sitting on the rolling machine.

I find that it was not part of the applicant's employment to assist in the work of rolling and that the applicant had no occasion in the course of his work to go near the rolling machine. I hold therefore that the accident did not arise out of or in the course of his employment.

It was argued for the applicant that, even if he was not engaged to work on the rolling machine, yet he went there to assist the men working it and there was evidence that the employees in the factory did at times voluntarily assist each other in their tasks.

I express no opinion as to whether assisting in such a manner would or would not take a workman out of the course of his employment but I think it is clear that when a workman is voluntarily assisting another in a particular kind of work he must obey the regulations applicable to the particular kind of work in which he is assisting. I would not go so far as to say that there was an express prohibition against going near the rolling machine but I find that there was an express prohibition against the wearing of gloves or long sleeves by men working on the machine, and if the applicant came to help at the rolling machine wearing gloves there was clearly a disobedience to the order.

Therefore, if I am wrong in holding that the accident did not arise out of the employment yet I would still dismiss the claim on the ground that the applicant was acting in wilful breach of an express order framed for his safety.

I award costs to the respondents and in view of the large sum claimed I order that the costs be taxed on the lower scale of Schedule C of the Civil Procedure Code.

Claim dismissed.

Solicitor for the Applicant—*S. C. Goho.*

Solicitors for the Respondents—*Donaldson & Burkinshaw.*

[ADMIRALTY JURISDICTION]

GERAHTY, J.

October 31, 1933.

DROUTH.....**Plaintiff.**

vs.

THE SHIP "G. G. PAUL DOUMER"

Defendants.

[SINGAPORE ADMIRALTY SUIT No. 3 of 1931]

Arbitration—written agreement between charterers to submit differences to arbitration—Suit in rem*—stay of proceedings—Ordinance No. 51 (Arbitration) s. 5.*

Where the plaintiff as 2nd Charterer of a ship proceeded against the ship and the 1st charterers not being party to the suit applied for a stay of proceedings on the ground that they and the plaintiff had by a written submission agreed that all disputes and differences regarding the charter should be settled by arbitration at Saigon.

Held, that the 1st Charterers had a right to have their liabilities, if any, determined by arbitration in accordance with the submission unless they had divested themselves of that right by taking any other step in the action.

Held further, that the plaintiff not having discharged the burden cast upon him of showing cause why the agreement to submit should not be given effect to, the proceedings must be stayed without prejudice to his rights to proceed further *in rem* in the event of failure by the defendants to pay any sum which may be awarded on arbitration.

MOTION by the first charterers of the ship "G. G. Paul Doumer" for a stay of all proceedings under section 5 of Ordinance 51 (Arbitration).

The application was heard before Gerahty, J. The material facts are set out and sufficiently appear from the Judgment below.

Vaux for the plaintiff.

Battishill for the defendants.

Cur. Ad. Vult.

GERAHTY, J.—This is a motion by the first charterers of the ship "G. G. Paul Doumer" for a stay of all further proceedings under Section 5 of Ordinance No. 51 (Arbitration) in an action *in rem* brought by the second charterer as plaintiff against the said ship "G. G. Paul Doumer" on the ground that the plaintiff and the said 1st charterers have under a submission contained in Article 13 of a Charter Party, dated 1st June, 1930, made between the 1st charterer and the plaintiff, agreed that all disputes and differences regarding the said charter should be settled by way of arbitration at Saigon.

The claim in the action as set out in the Petition is for moneys supplied to the ship by the plaintiff, through his agents at Hong Kong, at the request of the master of the ship for expenses and necessaries during her voyage from Timor to Macao in November/December, 1930 and for necessaries in January, 1931.

The Motion is supported by an affidavit, dated 19th September, 1933, of Mr. W. J. M. Warden, an assistant in the employ of the local agents of the 1st charterers.

The English translation of Article XIII of the Charter Party which is in French is as follows:—

ARTICLE XIII.

DISPUTES.

The parties declaring that they wish to have all disputes and differences regarding the present contract, settled by way of arbitration at Saigon.

The arbitrators will be chosen, either amicably by the parties or by the President of the Tribunal of Commerce of Saigon, on the request of one of the parties.

The arbitrators may enlighten themselves by all ways and means and by all measures, that they may deem useful. They will not be obliged to follow the rules of the law, or to observe the forms and delays established by the code of proceedings. They will have the part of amicable compounders and will judge from justice, supremely and without appeal.

The parties undertake to submit themselves to the decision of the arbitrators and oblige themselves to execute such decisions, renouncing any kind of appeal whatsoever concerning the decisions arrived at.

The expenses incurred by the arbitration will be paid in conformity with the decision that the arbitrators will take in this respect.

Prima facie the Petition shows that the matters in dispute arose when the ship was still under the Charter Party and have regard to that contract, and, in my opinion, the legal proceedings which it is sought to stay are in respect of matters which the present applicants and the plaintiff have agreed to refer and which therefore come within the terms of the submission.

A question arises whether the application to stay is made by a party to the proceedings since those proceedings are in the nature of an action *in rem*. In this case the present applicants have not entered an appearance in their capacity as 1st charterers and have not appeared in the proceedings until the present motion was instituted. An appearance however was entered for the ship by the applicants' solicitor on 12th December, 1931, and if that form of appearance is not technically sufficient to include the 1st charterers, it is a matter which can be simply rectified and counsel for the applicants has undertaken to do so if necessary.

It is an established rule of law that unless there is a liability on the part of the ship-owners there cannot be a remedy *in rem* against the ship. See *The Tolla* (1921) p. 22 and Maclachlan on Merchant Shipping 7th Edition p. 85. It follows in my opinion that the applicants have the right to have their liabilities, if any, determined by arbitration in accordance with the submission unless they have divested themselves of that right by taking any other step in the action or in any other way.

In my opinion the only step which the defendants may be deemed to have taken in the action is an application, dated 26th January, 1932, for an order that the plaintiff do deliver a statement in writing of the nature of the plaintiff's claim, upon which an order was duly made.

The case of *Ives & Barker* v. *Willans* (1894) 2 Ch 238 is a clear authority for holding that requiring delivery of a statement of claim is not a step in the proceedings within the meaning of Section 5 (1) of Ordinance No. 51.

The ship was arrested at Singapore and the point has been taken that bail has been given for the release of the ship and that thereby the applicants have submitted to the jurisdiction of the Court.

I am not impressed with this argument for obviously this was an urgent and necessary proceeding. The applicants by their motion are not challenging the jurisdiction of the Court, they are merely praying the Court to exercise its discretion to stay these proceedings and to leave them to the tribunal to which they have agreed.

The principle on which the Court will exercise discretion is set out in Russell on Arbitration and Award 12th Edition 105-106.

In *Willesford* v. *Watson*, (1873) L.R. 8 Ch. 473 at p. 480, Lord Selborne said "If parties choose to determine for themselves that they will have a domestic forum instead of resorting to the ordinary Courts, then, since that Act of Parliament (Common Law Procedure Act, 1854) was passed a *prima facie* duty is cast upon the Courts to act upon such an agreement." This *dictum* has subsequently been approved by the Court of Appeal.

It is also settled law that the burden of showing cause why the agreement to submit should not be given effect to is upon the party opposing the application to stay. See *Hodgson* v. *Railway Passengers' Assurance Co.*, (1882) 9 Q.B.D. 188.

On the motion before me I am of opinion that the plaintiff has not discharged that burden and accordingly I order that all further proceedings herein be stayed, but subject to the solicitor for the applicants rectifying his memorandum of appearance by including the applicants as 1st charterers.

No cases have been cited to me and I have been unable to find any authorities, in which a stay of proceedings has been either applied for or ordered on similar grounds in actions *in rem*. The reasons may be that where provision exists for a submission to arbitration by the parties, recourse by one of them to an action *in rem* would be premature. On this point the case of *The Sulph*, (1867) L.R. 2 A. & E. 24; 37 L.J. Ad. 14 is of interest. In that case where a claim made by a diver for injuries received from the defendants steamer was referred to arbitration, with a clause in the agreement of reference that in case the award should not be performed by the defendants all the plaintiffs rights should be reserved, upon failure of the defendants to pay the sum awarded it was held that the plaintiff was entitled to proceed *in rem* in the Court of Admiralty.

The comment upon this case at p. 482 of Russell on Arbitration (12th Edition) is that "it would seem that the decision would have been the same had there been no reservation of the plaintiff's rights."

I take the view then that the order of stay made herein would not affect the plaintiff's rights to proceed further *in rem* in the event of failure by the defendants to pay any sum which may be awarded on arbitration. I reserve the question of costs for further argument.

Order accordingly.

Solicitors for the Plaintiff—*Rodyk & Davidson.*
Solicitors for the Defendant—*Sisson & Delay.*

[ORIGINAL CIVIL JURISDICTION]
HUGGARD, C. J.
March 6, 1934.

CHOP TIONG KOK HANG.....Plaintiffs.

vs.

HOCK CHEONG & CO.....Defendants.

[SINGAPORE CIVIL SUIT No. 789 of 1933]

Bills of Exchange—executed outside the Colony—stamped in the Colony after acceptance—inadmissibility in evidence—Stamp Ordinance, 1929, Ss. 39, 40, 43, 49.

Foreign bills of exchange, stamped after acceptance, are expressly excluded from the general provisions of sections 39 and 40 of the Stamp Ordinance, 1929, under which instruments executed out of the Colony may be stamped within 30 days after receipt in the Colony or at any time prior to acceptance. Where such bills are late-stamped they are deemed to be not "duly stamped" within the meaning of Section 49 of the Ordinance and are therefore inadmissible in evidence.

The facts of the case sufficiently appear from the Judgment.

Smith for the Plaintiffs. The only question before the Court concerns the validity of the bills in view of the fact that there was some defect in stamping.

It is admitted that the bills were not stamped and a penalty was paid. The point is whether the bills were void by reason of their not having been stamped before acceptance. Under the Stamp Act, 1891, section 38 (if that law applies) the plaintiffs should have no case but that section does not appear in our Ordinance in that form. A bill of exchange is defined in Section 2 of the Stamp Ordinance, 1929. Section 4 provides for the charge of duty. The sections of the Stamp Ordinance relevant to this case are sections 40, 43 and 49, proviso (a). Cf. Section 28 of the Stamp Act. *Dawson* v. *McDonald*, 2 M. & W. p. 26. The only consequence of non-stamping is that the bill cannot be admitted in evidence. *Bradley* v. *Bardsley & Anor.*, 15 L.J.Ex. 115 at p. 118. In the present case the matter of stamp-